

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

GABRIEL MIDALGO,

Plaintiff,

9:03-CV-1128
(NAM)(RFT)

v.

SGT. BASS; SPINNER; C.O. STREETER; JOHN DOE,
Head Medical Staff; C.O. BENNET; SGT. TRIMM; C.O. BOUYEA,

Defendants.

APPEARANCES:

OF COUNSEL:

GABRIEL MIDALGO
97-A-7235
Plaintiff, *pro se*
Southport Correctional Facility
P.O. Box 2000
Pine City, NY 14871

HON. ELIOT SPITZER
Office of the Attorney General
State of New York
615 Erie Boulevard West
Suite 102
Syracuse, NY 13204

SENTA B. SUIDA, ESQ.

RANDOLPH F. TREECE, U.S. MAGISTRATE JUDGE

ORDER

By Order filed on September 26, 2006, District Judge Mordue granted Defendants' Motion for Summary Judgment and dismissed the Complaint of Plaintiff Gabriel Midalgo. Dkt. No. 116. Judgment was entered in favor of Defendants and against Plaintiff on September 26, 2006. Dkt. No. 117. Plaintiff has appealed from the Order to the Second Circuit Court of Appeals. Dkt. No. 119. Presently before the Court is Plaintiff's request to proceed *in forma pauperis* during the appeal of his case. Dkt. No. 120.

The procedure for a leave to proceed on appeal *in forma pauperis* from the District Court to the Court of Appeals is governed by Rule 24 of the Federal Rules of Appellate Procedure. Rule 24(a)(3)

states in relevant part that:

A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless:

(A) the district court--before or after the notice of appeal is filed--certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding; or

(B) a statute provides otherwise.

Because the Court previously granted Plaintiff's *In Forma Pauperis* Application (see Dkt. No. 6), and has not revoked same, Plaintiff may proceed on appeal *in forma pauperis* without further authorization from this Court. Accordingly, Plaintiff's Application (Dkt. No. 120) is **denied** as moot.¹

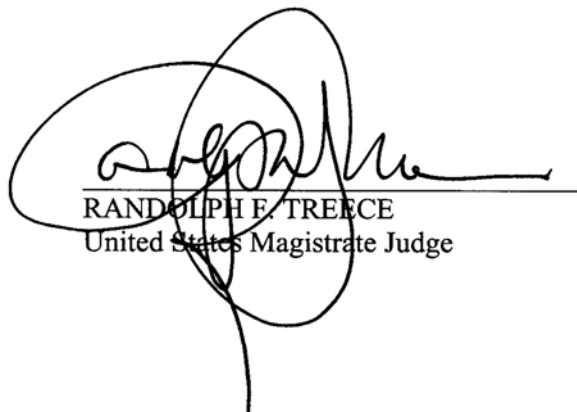
WHEREFORE, it is hereby

ORDERED, that Plaintiff's request to proceed with the appeal of this matter *in forma pauperis* (Dkt. No. 120) is **denied** as moot, and it is further

ORDERED, that the Clerk serve a copy of this Order on the parties.

IT IS SO ORDERED.

Date: October 11, 2006
Albany, New York



RANDOLPH F. TREECE
United States Magistrate Judge

¹ Neither this ruling nor the prior granting of Plaintiff's Application to Proceed *in Forma Pauperis* in any way prevents the Second Circuit from collecting the fees due it in light of the Prison Litigation Reform Act.